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Water Operations and Maintenance, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

AMERICAN WATER OPERATIONS AND
MAINTENANCE, INC.,

Plaintiff,

v.

DEFENSE LOGISTICS AGENCY
ENERGY,

Defendant.

Civil Action No. 1:14-cv-01950-NLH-JS

**CONSENT ORDER REMANDING
MATTER FOR FURTHER
PROCEEDINGS**

THIS MATTER having come before the Court by joint application of both Plaintiff, American Water Operations and Maintenance, Inc. (“American Water”), and Defendant, Defense Logistics Agency Energy (“DLA”), for an order remanding this matter to DLA for further proceedings to supplement the administrative record, and good cause having been shown;

WHEREAS, American Water and DLA entered into Contract No. SP0600-14-C-8290 (the “Contract”), and that the Contract contains line-item pricing and other detailed financial and pricing information provided to DLA by American Water, and

WHEREAS, DLA received a Freedom of Information Act (“FOIA”) request (“the FOIA Request”), seeking a copy of Contract No. SP0600-14-C-8290, and

WHEREAS, on February 10, 2014, DLA notified American Water of the FOIA Request, and

WHEREAS, on February 19, 2014, American Water replied to the DLA notice and objected to the release of certain pricing and associated information contained in the Contract (the “Contested Information,” as described by American Water in its verified complaint at ¶ 2) and asserting that the Contested Information is protected from disclosure by Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), as trade secrets or privileged and confidential commercial or financial information, and

WHEREAS, on March 20, 2014, DLA notified American Water of its determination that the Contested Information failed to qualify for withholding under Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), and that, if American Water disagreed with DLA’s determination, American Water had the right to file suit in federal court in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, to challenge the release of the Contract in the form enclosed, which included the Contested Information, and

WHEREAS, on March 28, 2014, American Water filed this action to challenge the release of the Contested Information, and

WHEREAS, American Water has additional factual information that may be relevant to the determination of whether the Contested Information is protected from disclosure by Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), as trade secrets or privileged and confidential commercial or financial information, and wishes to supplement the administrative record to make this information available to DLA, and

WHEREAS, DLA also wishes to supplement the administrative record regarding its position on whether the Contested Information is protected from disclosure by Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), as trade secrets or privileged and confidential commercial or financial information, and

WHEREAS, DLA has agreed that, if this Court remands this matter to DLA for supplementation of the administrative record, DLA will consider the additional information from American Water regarding whether the Contested Information is protected from disclosure by Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), as trade secrets or privileged and confidential commercial or financial information, and


WHEREAS, the parties agree that remanding this matter for supplementation of the administrative record will benefit both the parties and the Court because it may allow resolution of this matter without the Court's involvement and, to the extent a dispute still exists after remand, will allow the Court to consider this case on a more complete administrative record; now therefore

IT IS ORDERED that this matter is hereby remanded to DLA for further proceedings to supplement the administrative record; and

IT IS FURTHER ORDERED that any pending scheduling deadlines presently in this litigation are hereby stricken to permit adequate time to complete the administrative proceeding; and

IT IS FURTHER ORDERED that to the extent this dispute is not resolved on remand before DLA, the parties are permitted to revive this action, or file a new action, as appropriate in this Court.

Dated: December 30 2014



Hon. Noel L. Hillman, U.S.D.J.

AMERICAN WATER OPERATIONS AND
MAINTENANCE, INC.

By its attorneys:

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